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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,994	01/03/2002	Jason S. Altman	10622.6802	1117
7590	04/27/2004		EXAMINER	
Daniel S Polley Esq Malin Haley & DiMaggio PA 1936 South Andrews Avenue Fort Lauderdale, FL 33316				MORAN, KATHERINE M
		ART UNIT	PAPER NUMBER	3765

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary	Applicati	Applicant(s)
	N .	
	10/037,994	ALTMAN, JASON S.
	Examin r	Art Unit
	Katherine M Moran	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 February 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 1-10 and 18-20 is/are allowed.

6) Claim(s) 11,17 and 21 is/are rejected.

7) Claim(s) 12-16 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 03 January 2002 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date .

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: .

DETAILED ACTION

Response to Amendment

Applicant's amendment of 2/2/2004 has been reviewed and received. The amendment amended claims 11 and 18 and added new claims 21. Claims 1-21 are pending. Applicant's response to the letter of 2/23/2004 has also been reviewed and the previous objection to the amendment format has been withdrawn.

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 18-20 recite a non-transparent and opaque protective covering.

Claim Objections

2. Claims 11 and 18 are objected to because of the following informalities: claim 11, line 11: delete "a" and insert --at--; claim 18, line 5: delete "and". Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11, 17, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Rushton, Jr. (U.S. 4,958,385). Rushton discloses the invention as claimed. Rushton teaches a protective covering 10 for protecting a user from liquid runoff originating from the user's hair, the covering comprising a flexible absorbent pad 13 having a substantially planar surface and first and second sides, and an adhesive member 21 or 22 disposed on at least a portion of the first side of the pad for securing the pad to a substantial portion of an upper part of a user's forehead area, including adjacent to where the forehead area meets the user's hairline. In use, the pad is disposed at at least the upper part of the user's forehead area including adjacent to where the forehead area meets the user's hairline to absorb at least some liquid runoff originating from the user's hair during a hair treatment. The pad has a top edge that is profiled to follow an average hairline and is constructed from a chemical absorbing material as discussed above. Rushton also teaches a method for protecting a user from liquid runoff originating from the user's hair comprising the steps of: providing a flexible absorbent pad 13 having a substantially planar surface, the pad having first and second sides, with an adhesive member 21 or 22 disposed on at least a portion of the first side, securing the pad to a substantial portion of an upper part of a forehead of a user, including adjacent to where the forehead area meets the user's hairline, wherein once secured, the pad is capable of absorbing at least some liquid runoff originating from the user's hair during a hair treatment.

Allowable Subject Matter

5. Claims 12-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claims 1-10 and 18-20 are allowed. (see objections for claims 18-20 above)

Response to Arguments

7. Applicant's arguments, see the reply of 2/2/2004, with respect to the rejection(s) of claims 11-20 under Craig U.S. 4,122,847 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Rushton.

Conclusion

8. Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (703) 305-0452. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (703) 305-1025. The official and after final fax number for the organization where this application is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

April 20, 2004



Katherine Moran

Primary Examiner, AU 3765